

documents. If requested by the respondent in the written submission, the Assistant Secretary shall hold a hearing on the renewal application. The hearing shall be on the record and ordinarily will consist only of oral argument. The only issue to be considered on BXA's request for renewal is whether the temporary denial order should be continued to prevent an imminent violation as defined herein.

(ii) Any person designated as a related person may not oppose issuance or renewal of the temporary denial order, but may file an appeal in accordance with § 766.2(3)(c) of this part.

(iii) If no written opposition to BXA's renewal request is received within the specified time, the Assistant Secretary may issue the order renewing the temporary denial order without a hearing.

(4) A temporary denial order may be renewed more than once.

(e) *Appeals*—(1) *Filing*. (i) A respondent may, at any time, file an appeal of the initial or renewed temporary denial order with the administrative law judge.

(ii) The filing of an appeal shall stay neither the effectiveness of the temporary denial order nor any application for renewal, nor will it operate to bar the Assistant Secretary's consideration of any renewal application.

(2) *Grounds*. A respondent may appeal on the grounds that the finding that the order is necessary in the public interest to prevent an imminent violation is unsupported.

(3) *Appeal procedure*. A full written statement in support of the appeal must be filed with the appeal together with appropriate evidence, and be simultaneously served on BXA, which shall have seven days from receipt to file a reply. Service on the administrative law judge shall be addressed to the Office of the Administrative Law Judge, U.S. Department of Commerce, Room H-6716, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Service on BXA shall be as set forth in § 766.5(b) of this part. The administrative law judge normally will not hold hearings or entertain oral argument on appeals.

(4) *Recommended Decision*. Within 10 working days after an appeal is filed, the administrative law judge shall sub-

mit a recommended decision to the Under Secretary, and serve copies on the parties, recommending whether the issuance or the renewal of the temporary denial order should be affirmed, modified or vacated.

(5) *Final decision*. Within five working days after receipt of the recommended decision, the Under Secretary shall issue a written order accepting, rejecting or modifying the recommended decision. Because of the time constraints, the Under Secretary's review will ordinarily be limited to the written record for decision, including the transcript of any hearing. The issuance or renewal of the temporary denial order shall be affirmed only if there is reason to believe that the temporary denial order is required in the public interest to prevent an imminent violation of the EAA, the EAR, or any order, license or other authorization issued under the EAA. The Under Secretary's written order is final and is not subject to judicial review, except as provided in paragraph (g) of this section.

(f) *Delivery*. A copy of any temporary denial order issued or renewed and any final decision on appeal shall be published in the FEDERAL REGISTER and shall be delivered to BXA and to the respondent, or any agent designated for this purpose, and to any related person in the same manner as provided in § 766.5 of this part for filing for papers other than a charging letter.

(g) *Judicial review*. A respondent temporarily denied export privileges by order of the Under Secretary may appeal to the United States Court of Appeals for the District of Columbia pursuant to 50 U.S.C. app. § 2412(d)(3).

§ 766.25 Administrative action denying permission to apply for or use export licenses.

(a) *General*. The Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny permission to apply for or use any license, including any License Exception, to any person who has been convicted of a violation of the EAA, the EAR, or any order, license or authorization issued thereunder; any regulation, license or order issued under the International Emergency Economic Powers Act (50

U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(b) *Procedure.* Upon notification that a person has been convicted of a violation of one or more of the provisions specified in paragraph (a) of this section, the Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, will determine whether to deny permission to apply for or use any export license, including any License Exception, to any such person. The Director of the Office of Exporter Services will notify each person denied under this section by letter stating that permission to apply for or use export licenses has been denied.

(c) *Criteria.* In determining whether and for how long to deny U.S. export privileges to a person previously convicted of one or more of the statutes set forth in paragraph (a) of this section, the Director of the Office of Exporter Services may take into consideration any relevant information, including, but not limited to, the seriousness of the offense involved in the criminal prosecution, the nature and duration of the criminal sanctions imposed, and whether the person has undertaken any corrective measures.

(d) *Duration.* Any denial of permission to apply for or use export licenses, including any License Exception, under this section shall not exceed 10 years from the date of the conviction of the person who is subject to the denial.

(e) *Effect.* Any person denied permission to apply for and use licenses under this section will be considered a “person denied export privileges” for purposes of §736.2(b)(4) (General Prohibition 4—Engage in actions prohibited by a denial order) and §764.2(k) of the EAR.

(f) *Publication.* The name and address(es) of any person denied permission to apply for or use export licenses under this section will be published as described in Supplement No. 2 to part 764 of the EAR, noting that such action was taken pursuant to this section and section 11(h) of the EAA.

(g) *Appeal.* An appeal of an action under this section will be pursuant to part 756 of the EAR.

(h) *Applicability to related person.* The Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may take action in accordance with §766.23 of this part to make applicable to related persons an order that is being sought or that has been issued under this section.

PART 768—FOREIGN AVAILABILITY DETERMINATION PROCEDURES AND CRITERIA

Sec.

768.1 Introduction.

768.2 Foreign availability described.

768.3 Foreign availability assessment.

768.4 Initiation of an assessment.

768.5 Contents of foreign availability submissions and Technical Advisory Committee certifications.

768.6 Criteria.

768.7 Procedures.

768.8 Eligibility of expedited licensing procedures for non-controlled countries.

768.9 Appeals of negative foreign availability determinations.

768.10 Removal of controls on less sophisticated items.

SUPPLEMENT NO. 1 TO PART 768—EVIDENCE OF FOREIGN AVAILABILITY

SUPPLEMENT NO. 2 TO PART 768—ITEMS ELIGIBLE FOR EXPEDITED LICENSING PROCEDURES [Reserved]

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Executive Order 13026 (November 15, 1996, 61 FR 58767) Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

SOURCE: 61 FR 12915, Mar. 25, 1996, unless otherwise noted.

§ 768.1 Introduction.

In this part, references to the Export Administration Regulations (EAR) are references to 15 CFR chapter VII, subchapter C.

(a) *Authority.* Pursuant to sections 5(f) and 5(h) of the Export Administration Act (EAA), the Under Secretary of Commerce for Export Administration directs the Bureau of Export Administration (BXA) in gathering and analyzing all the evidence necessary for the